

## **REMARKS/ARGUMENTS**

Responsive to the Office Action dated February 12, 2007, Applicant appreciates the Examiner's withdrawal of the finality of the previous Office Action. Claims 30-41 and 66-99 have been previously withdrawn and Claims 2, 29, 43, and 65 have been previously canceled. Accordingly, Claims 1, 3-28, 42, and 44-64 remain pending for prosecution with Claims 1 and 42 being independent.

### **I. Claim Rejections - 35 U.S.C. § 112**

Applicant appreciates the withdrawal of this rejection.

### **II. Claim Rejections - 35 U.S.C. § 102**

Applicant appreciates the withdrawal of this rejection.

### **III. Claim Rejections - 35 U.S.C. § 103**

Claims 1, 3-28, 42 and 44-64 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,414,838 to Kolton in view of U.S. Patent No. 6,920,426 to Takechi. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

#### **A. Improper Rejection and New Search**

Applicant submits that the new grounds of rejection, based on Kolton and Takechi are improper in that the only claim amendments in its last Amendment responsive to the Final Office Action dated April 24, 2006 were to replace the word "factor" with "indicator" in order to comply with the previous Examiner's assertion that the terms "reliability factor" lacked insufficient antecedent basis. These simple formality-based amendments were not sufficient to justify a new search. Moreover, Applicant respectfully submits that the Examiner has impermissibly failed to give full faith and credit to the previous Examiner's search and actions.

There is no evidence that the previous Examiner committed clear error in the previous action (other than to issue a premature final office action) nor is there any evidence that the previous Examiner's knowledge of the prior art was insufficient. The new Examiner has taken an entirely new approach to the present application and has used a new search in the mere hope of finding something in violation of MPEP § 704.01. Moreover, this change in approach and new search has resulted in a piecemeal approach to examination of the present invention and, under MPEP § 707.07(g), piecemeal examinations should be avoided. Applicant therefore respectfully requests reconsideration and withdrawal of this new rejection under 35 U.S.C. § 103(a).

### **B. The Rejection**

With regard to Claims 1, 7-28, 42 and 48-64, it was asserted in the Office Action that "Kolton teaches a computer-implemented method for providing information over a communication network to a computer user, said method comprising: gathering a plurality of information items relating to a subject, said information items including data items and content items, wherein each of said data items includes the value of an attribute associated with said subject for a particular date and each of said content items includes a statement summarizing an occurrence for a particular data (Abstract, Figs. 1, col. 1, lines 15-21; col. 2, lines 25-38); storing said information items (Fig. 2); and creating an electronic page containing in part a graphic representation that includes a number of data points corresponding to at least a portion of said data items, said data points arranged by date or date range (Fig. 9A-9E)." It was admitted that the Kolton "does not explicitly teach assigning a reliability indicator to each of said content items." However, it was further asserted that "Takechi teaches assigning a reliability indicator to each of said content items (Abstract)." Therefore, the Office Action concludes that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kolton

to include this feature. One would have been motivated to do so in order to allow information users to estimate the factuality and reliability of the information.”

With regard to Claims 3-6 and 44-47, the Office Action admitted that “Kolton and Takechi do not explicitly teach color, number, letter and typeface indicators.” However, Official Notice was taken that “the use of these indicators are old and well known.” Therefore, the Office Action concludes “[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kolton to include these features. One would have been motivated to do so in order to allow for different or multiple ways for representing the indicators, thereby enhancing the overall flexibility.”

### **C. Discussion**

When determining the question of obviousness, underlying factual questions are presented which include (1) the scope and content of the prior art; (2) the level of ordinary skill in the art at the time of the invention; (3) objective evidence of nonobviousness; and (4) the differences between the prior art and the claimed subject matter. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

The person of ordinary skill in the art is a hypothetical person who is presumed to know the relevant prior art. Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc., 807 F.2d 955, 962, 1 USPQ2d 1196, 1201 (Fed. Cir. 1986). The level of ordinary skill in the art of winding apparatus may be determined by looking to the references of record. In re GPAC, Inc., 57 F.3d 1573, 35 USPQ2d 1116 (Fed. Cir. 1995). The references of record in this case reveal a moderate level of sophistication in waterproof membrane manufacturing is associated with one of ordinary skill. Thus, Applicant submits that, as substantiated by the cited references, those with a bachelor’s degree in computer science or significant experience in the computer programming

industry or the like would most likely be a person with ordinary skill in the this field of endeavor.

With respect to objective evidence of nonobviousness, Appellant submits that the record supports the conclusion that there are long-felt but unsolved needs met by the present invention. The present invention is directed to the particular problem of providing an efficient and effective method of providing reliable and unbiased investment information to investors. In particular, gathering, summarizing, assigning a reliability code, storing, and making pertinent information available over the Internet to investors.

In determining whether obviousness is established by the teachings of the prior art, "the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." Cable Electric Products, Inc. v. Genmark, Inc., 770 F.2d 1015, 1025, 226 USPQ 881, 886-887 (Fed. Cir. 1985); In re GPAC, 35 USPQ at 1123. To invalidate claimed subject matter for obviousness, the combined teachings of the prior art references must suggest, expressly or by implication, the improvements embodied by the present invention. In re Sernaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983).

"In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based on the prior art." In re Fritch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under Section 103, teachings of references can be combined *only* if there is some suggestion or incentive to do so." ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

Applicant respectfully submits that the Office Action has failed to demonstrate the suggestion or motivation, present either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings as required by the first criteria of obviousness. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 16 USPQ2d 1430 (Fed. Cir. 1990). Since both Kolton and Takechi, individually and in combination, fail to teach or suggest Applicant's invention as claimed, Applicant respectfully submits that the combination is improper and fails to teach or suggest the present invention.

The Office Action itself acknowledged that Kolton does not teach or suggest assigning a reliability indicator to each content item. Kolton also fails to teach or suggest data items that include the value of an attribute associated with a subject for a particular date and each of the content items including a statement summarizing an occurrence for a particular date. Rather, Kolton merely teaches a computer system that allows a user to easily search historical information for particular stock or bond prices. There is no teaching or suggestion anywhere in Kolton of providing data items that include the value of an attribute associated with a subject for a particular date and each of the content items including a statement summarizing an occurrence for a particular date and assigning a reliability indicator to each content item.

Similarly, Takechi also fails to teach or suggest the present invention as claimed. It is asserted by the Office Action that, per the Abstract, Takechi teaches assigning a reliability indicator to each of the content items. However, the Office Action fails to demonstrate or even address whether Takechi teaches or suggests providing data items that include the value of an attribute associated with a subject for a particular date and each of the content items including a

statement summarizing an occurrence for a particular date and assigning a reliability indicator to each content item. Rather, Takechi merely teaches providing users the ability to rank individual web pages. Takechi does not teach or suggest providing data items that include the value of an attribute associated with a subject for a particular date and each of the content items including a statement summarizing an occurrence for a particular date and assigning a reliability indicator to each content item.

The Office Action also acknowledges that both Kolton and Takechi fail to teach or suggest the use of color, number, letter and typeface indicators. The Office Action then asserts that Official Notice is being taken that these indicators are old and well known. Applicant respectfully traverses the Examiner's assertion of Official Notice as not being properly Officially Noticed. The Examiner has provided no documentary evidence to support this assertion. Moreover, Applicant respectfully traverses the Examiner's assertion of Official Notice as not be properly based upon common knowledge. Applicant submits that it is not well known to provide reliability indicators using colors, numbers, letters or typeface indicators to differentiate the reliability indicators. Applicant therefore respectfully that, because both Kolton and Takechi fail to teach or suggest the limitations of independent Claims 1 and 42 and, in particular, those of Claims 3-6 and 44-47 and because the Official Notice was not properly taken, the rejections of these claims should be withdrawn.

Prima facie obviousness requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references. No such suggestion or motivation exists in either Kolton or Takechi to provide data items that include the value of an attribute associated with a subject for a particular date and each of the content items including a statement summarizing an occurrence

for a particular date and assigning a reliability indicator to each content item. Moreover, there is no expectation of success in the combination of Kolton and Takechi since neither discloses these elements of Appellant's claimed invention. Finally, the prior art references must teach or suggest all the claim limitations. As discussed above, neither Kolton nor Takechi teach or suggest all of the elements of Appellant's independent Claims 1 and 42. Unless all the elements are taught by the references, there can be no success in modifying them.

Thus, at the time the present invention was made, both Kolton and Takechi, individually and in combination, fail to teach or describe all of the limitations claimed by Appellant in independent Claims 1 and 42 and the claims depending therefrom. Accordingly, Claims 1, 3-28, 42 and 44-64 are nonobvious under § 103(a) and Applicant respectfully requests reconsideration and withdrawal of this rejection.

#### **IV. Conclusion**

Applicant respectfully submits that the present application is now in condition for allowance and such is courteously solicited. If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard. The Commissioner is hereby authorized to deduct any required fees or credit any overpayments in this application to Deposit Account No. 11-0160.

Respectfully submitted,



---

Lara Dickey Lewis

Reg. No. 48,161

Blackwell Sanders Peper Martin LLP

4801 Main St., Suite 1000

Kansas City, MO 64112

816-983-8000

ATTORNEYS FOR APPLICANT